



No. 115.

Brief of *A. Cammon*  
IN THE  
Supreme Court of the United States.

October Term, 1899.

*Filed Oct. 30, 1899.*

THE STEAMER "PEDRO," SEBASTIAN  
BONNET, CLAIMANT,

APPELLANT,

v.

THE UNITED STATES.

No. 115.

Appeal from the District Court of the United States for  
the Southern District of Florida.

BRIEF FOR THE UNITED STATES AND THE CAPTORS.

JOS. K. McCAMMON,  
JAMES H. HAYDEN,

*Of Counsel for Captors.*

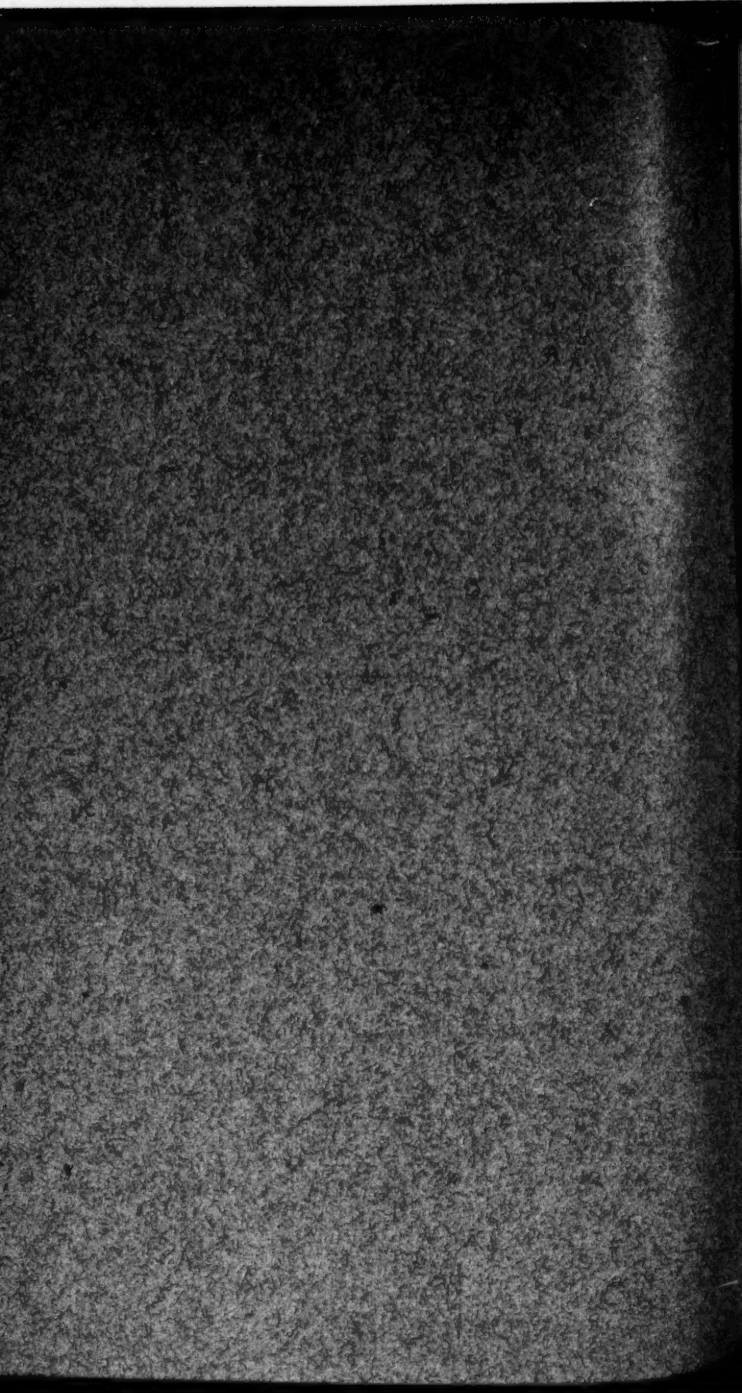
HENRY M. HOYT,

*Assistant Attorney General,  
for the United States.*

WASHINGTON, D. C. :

GIBSON BROS., PRINTERS AND BOOKBINDERS.

1899.



# Supreme Court of the United States.

OCTOBER TERM, 1899.

---

THE STEAMER "PEDRO," SEBASTIAN  
BONET, CLAIMANT,  
APPELLANT,

v.

THE UNITED STATES.

---

No. 115.

Brief for the United States and the Captors.

---

## STATEMENT OF FACTS.

This is an appeal, by the claimant of the Spanish Steamship *Pedro*, from a decree of the District Court of the United States for the Southern District of Florida, by which that vessel was condemned as a prize of war. (Pp. 13-15).

The *Pedro* was built at Newcastle, England, in 1883, and, until 1887, sailed under British registry and the name of *Lilburn Tower*. During the latter year she was conveyed to La Compania La Flecha, a Spanish corporation of Bilbao, Spain, and on October 4, 1887, obtained a royal patent from the Crown of Spain, which was issued to her as the property of the company. From that time

she has sailed under the Spanish flag and been under Spanish management, and been officered and manned by Spaniards. (Pp. 37, 38, 41, 42, 49, 50 .

On March 25, 1898, the *Pedro* sailed from Antwerp, with about two thousand tons of cargo, bound for Havana, Santiago, and Cienfuegos, Cuba. She carried no cargo for any port of the United States. Prior to her departure from Antwerp, she was chartered to proceed to Pensacola and there take a cargo of lumber for Rotterdam or Antwerp. The charter-party described her as "now loading in Antwerp for Cuba." (Pp. 44-47).

She arrived at Havana on April seventeenth and there remained for five days, at first discharging about sixteen hundred tons of her cargo, then taking on some twenty tons of general merchandise for Santiago. The twenty-first of April was fixed upon by act of Congress and by proclamation of the President as the day on which began the war between the United States and Spain. On April twenty-second, the President proclaimed the blockade of many Cuban ports held by Spain, including that of Havana. On April twenty-second the *Pedro* sailed from Havana for Santiago and later in the same day, when about fifteen miles east of the Morro, at the entrance of Havana harbor, and five miles north of the Cuban coast, was captured by the U. S. F. S. *New York*, one of the blockading fleet, and sent to Key West in charge of a prize crew. There the *Pedro* was libeled. In due course proofs *in preparatorio* were taken, which include all of the ship's papers and the depositions of Sebastian Bonet, her master, and Juan Arguelia, her first officer. Thereafter Bonet, as master, appeared in behalf of the owners, and made claim to the vessel. He moved the court for leave to take further proofs presenting with the motion, his test affidavit. (Pp. 4-8, 13.) In this it

was alleged that although a majority of the stock of La Compania La Flecha was registered in the names of Spanish subjects and only a minority in the names of British subjects, the latter had possession of all of the certificates and under the terms of the company's charter were equitably entitled to the whole of the stock. It was further alleged that the *Pedro* was transferred from British to Spanish registry for no purpose other than to get the benefit of certain discriminations made by Spain in favor of Spanish vessels engaged in trade between European ports and Spanish ports of the West Indies, and that it was the intention of the British stockholders to have the *Pedro* reconveyed to them and withdraw her from Spanish registry and restore her to British registry if a state of war should ever render such restoration desirable and expedient. It was also stated that the vessel was insured against all perils and adventures, including the risks of war, by Lloyds of London and other British underwriters, upon whom the loss would fall if she were condemned. The motion was overruled. The cause was heard upon the pleadings and proofs, taken *in preparatorio*, and the decree of condemnation entered. Subsequently the Secretary of the Navy elected to take the vessel for the use of the United States, pursuant to Sec. 4624, R. S. U. S. By order of court she was duly appraised and delivered to the Navy Department, and the amount of her appraised value deposited with the Assistant Treasurer of the United States at New York, subject to the order of the District Court.

On this appeal the claimant presents eight assignments of error. He contends that the *Pedro* was exempt from capture and condemnation, (1) as property owned by neutrals and (2) because of the privileges extended by the 4th, 5th, and other articles of the Proclamation of the

President, issued on April 26, 1898. He further contends that the court erred in denying his motion for leave to take further proofs.

We maintain :—

I. The *Pedro* at the time of her capture was enemy property, engaged in the commerce of the enemy and was liable to capture and condemnation as such. (Errors 1st, 2d, and 3d.)

II. The *Pedro* was not exempt from liability to capture and condemnation by virtue of any provision of the proclamation of the President, issued on April 26, 1898. (Errors 4th, 5th, 6th, and 7th.)

III. The claimant's test affidavit and the proofs in the cause do not set up a fact or create a doubt which would have justified the prize court in allowing the claimant to take further proofs. (Error 8th.)

#### I.

*The Pedro at the time of her capture was enemy property engaged in the commerce of the enemy, and was liable to capture and condemnation as such. (Errors 1st, 2d, and 3d.)*

The claimant argues, that inasmuch as British subjects were the legal owners of some and the equitable owners of the rest of the stock of La Compania La Flecha, and that the *Pedro* was insured against risks of war by British underwriters, she was a neutral ship and not liable to capture and condemnation.

In the case of *The Freundschaft*, 4 Wheat. 105, it appeared that a shipment was made by a firm established in London. Of the three partners, two were British subjects. The third, one Moreira, was domiciled in the Kingdom of Portugal. The United States and Great Britain being at



war, the *Freundschaft* was captured by an American vessel, and she and her cargo were condemned as prize. From this decree, Moreira appealed, claiming that the property, so far as his share was concerned, was neutral and not subject to condemnation. Story, J., delivering the opinion of the court, said :

"It has been long since decided in the Courts of Admiralty that the property of a house of trade established in the enemy's country, is condemnable as prize, whatever may be the domicile of the partners. The trade of such a house is deemed essentially a hostile trade and the property engaged in it is, therefore, treated as enemy's property, notwithstanding the neutral domicile of any of the company. The rule, then, being inflexibly settled, we do not now feel at liberty to depart from it, whatever doubt might have been entertained, if the case were entirely new."

*The Cheshire*, 3 Wall. 231 : "No principle is more firmly settled than that the property of a commercial house, established in the enemy's country, is subject to seizure and condemnation as prize, without regard to the domicile of the partners. The trade of a house of this kind is essentially a hostile trade, and the property employed in its prosecution is therefore treated as enemy's property, though some of the partners may have a neutral domicile. Such trade tends directly to add to the resources and revenues of the enemy; and, as observed by Mr. Justice Story, 'There is no reason why he who thus enjoys the protection and benefits of the enemy's country, should not, in reference to such a trade, share its dangers and losses.' It would be too much to hold him entitled by a mere neutral residence, to carry on a substantially hostile commerce and at the same time possess all the advantages of a neutral character."

*The Frances*, 8 Cranch, 335.

*Story's Principles and Practice of Prize Courts*, pp. 60-66.



If this rule has been applied to cases which involve the undivided interest of a neutral in property, owned by him in common with citizens of the enemy's country, no other can be applied in a case like the one at bar. Here the alleged holders of neutral interests had no title to the vessel, legal or equitable. She was owned absolutely by a corporation, incorporated under the laws of Spain, with its principal place of business in Spain; she was sailing under the Spanish flag and a Spanish license, and she was officered and manned by Spaniards. She was in every sense a Spanish vessel.

In a treatise upon International Law, by W. E. Hall, it is said (p. 524):

“Property not impressed with a belligerent character by its origin and belonging to a neutral, becomes identified with a belligerent by being subject wholly to his control or being incorporated into his commerce. Thus a vessel owned by a neutral, but manned by a belligerent crew, commanded by a belligerent captain, and employed in the trade of a belligerent State, is deemed to be a vessel of the country from which she navigates, and the acceptance of a pass or license from a belligerent State or of sailing under its flag, entails the same consequence.”

In several decisions of this court it has been held that the mere act of sailing under a license granted by a belligerent state is sufficient to condemn a vessel without regard to the object of her voyage or the port of her destination.

*The Ariadne*, 2 Wheat. 143, 147-148.

*The Hiram*, 1 Wheat. 440, 447.

*The Aurora*, 8 Cranch, 203.

*The Julia*, Id. 181.

It is entirely immaterial whether any or all of the stock of La Compania La Flecha was owned by neutrals. The British subjects, formerly the owners of the *Pedro*, renounced her rights as a British vessel when they conveyed her to the Spanish corporation. That the transfer was made for commercial reasons does not alter the case. Spanish registry is only given to Spanish ships. The former owners cannot deny that, when they elected to take the benefit of Spanish navigation laws, and the commercial profits to be had through the discrimination of those laws against ships of other nations, they also elected to rely upon the protection afforded by the Spanish flag.

The alleged intention of the British stockholders to restore the *Pedro* to British registry, if Spanish wars rendered the change desirable, cannot be seriously considered. The restoration had not been effected when the *Pedro* was captured, and it could not be made afterward. It is not expected that the shipping of the world will shift about from one allegiance to another, to suit temporary conditions of war and trade.

## II.

*The Pedro was not exempt from liability to capture and condemnation by virtue of any provision of the proclamation of the President, issued on April 26, 1898. (Errors 4th, 5th, 6th, and 7th.)*

The appellant contends that the *Pedro* was not liable to capture and condemnation because war between the United States and Spain had not been formally declared prior to the time of her capture.

It is a fact, shown by the claimant in his brief on appeal (p. 6), that Spain regarded and treated the joint

resolution of Congress, approved on April 20, 1898, whereby the freedom and independence of the people of Cuba was recognized, as "equivalent to an evident declaration of war."

Under an established rule of international law, a formal declaration is not essential to the existence of a state of war, and all enemy property found on the high seas at the actual outbreak of war is the legitimate subject of prize.

*The Eliza Ann*, 1 *Dod.* 247.

The *Pedro* had lain in the harbor of Havana from the 17th until the 22d of April. She had seen American vessels, citizens, and officials departing. She must have been advised of the strained relations between the United States and Spain. She did not leave Havana till the day after that named by Congress and the President as the day on which war actually began. The President's proclamation declaring the blockade of Havana was issued on April 22d. The United States fleet was already off the harbor, almost within range of the Morro's guns. The capture was made only fifteen miles to the eastward of the harbor and five miles from the Cuban coast. If it were material, it would be folly to suggest that the *Pedro* had no adequate warning of the risk that she ran in putting to sea.

The *Pedro's* case did not come within the scope of the immunity granted by the fourth article of the proclamation. It provided :

"Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places ; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that

their cargoes were taken on board before the expiration of the above terms ; provided, that nothing herein contained shall apply to Spanish vessels having on board any officers in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government."

The proclamation gave immunity from capture in cases where capture would have been proper under the rules of international law. It must be construed strictly. It was not intended to grant privileges other than those specifically set forth, or following these as a necessary consequence. The letter of the proclamation, specifically limiting its scope, is not to be disregarded in favor of a mere supposition as to what is the tendency of civilization and what should have been the policy of the United States.

*The Phœnix, Spink's Prize Cases.*

*Hannibal & S. L. R. Co. v. Missouri R. Co.*, 125 U. S. 260.

*St. Paul, M. & R. Co. v. Phelps*, 137 U. S. 528.

On April 21st the *Pedro* was not "in any port or place within the United States," but in Havana, a port of the enemy. The proclamation extended protection to Spanish vessels then in one of our ports, upon whom the war came unawares while they were directly within the power of the United States. It was not intended to include all Spanish vessels which might put to sea prior to May 21.

The claimant argues that inasmuch as the *Pedro*, after her capture, was taken to Key West and there libeled on April 23d, she was then in a port of the United States and under the terms of the proclamation was entitled to depart without hindrance. We submit that when she reached Key West she was not a Spanish merchant vessel, but a prize of war.

Although condemnation had not been decreed, the rights of the United States and the captors had existed, though inchoate, from the time of capture. (The *Mary & Susan*, 1 Wheaton, 46, 58.) Besides, as we have noted, the *Pedro* was not in the port of Key West on April 21st.

The fifth article of the proclamation provided :

"Fifth. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States shall be permitted to enter such port or place and to discharge her cargo and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded."

The act of Congress, approved on April 25th, and the proclamation of the 26th, are explicit in fixing April 21st as the date upon which war began. The proclamation is explicit in fixing April 21st as the last day whereon a vessel might have sailed from a foreign port bound for one of the United States, and yet be exempt from capture and condemnation. It was not intended to protect Spanish vessels except such as might be proceeding to the United States to deliver cargoes.

There seem to be two reasons for the granting of this exemption :

First. A Spanish vessel might have left a distant port without any knowledge that the relations of the two nations, long strained to the breaking point, had developed into war. Such a vessel, bound direct for one of our ports, having no intermediate port of call would not be likely to gain information of the outside world until a shot across her bows informed her that she was a prize. This would be a harsh experience, and one which the more humane methods of modern warfare aim to prevent.

Second. It is desirable, as a matter of policy, that at the outbreak of war a nation be supplied with foreign goods. Hence, that the vessels of another nation with which war is likely to ensue should not be deterred from coming here upon the first, perhaps unfounded, rumors of approaching hostilities. It was desirable that the cargoes of Spanish vessels, in many instances containing goods ordered or even bought by citizens of the United States, should be allowed to enter.

Neither the immunity granted by the fifth article of the proclamation, nor any implication properly derived from it, can include the case of the *Pedro*. She never contemplated a continuous voyage from a foreign port to a port of the United States. In her charter-party, dated March 18, 1898, her agents, Fletcher & Co., stated that she was then "loading in Antwerp for Cuba" (p. 44). She intended to proceed to Pensacola, only after discharging at Cuban ports such cargo as she brought from abroad and such as she might get at Havana and elsewhere. Had it been her main object to proceed to the United States, she could have discharged her cargo at Havana and cleared for Pensacola prior to April 21st, and might even have reached Pensacola on that day. Had she done so there might have been a plausible ground for claiming the protection extended by the proclamation, but she did otherwise. After unlading part of her original cargo at Havana, the *Pedro* remained, taking on more, all of which was shipped for Santiago and other Cuban ports held by the Spanish forces. Not until April 22d, after the war had actually begun and the period of exemption had ceased and the blockade of Havana had been proclaimed and established, did she put to sea. Even then she did not clear for Pensacola, but for Santiago. From the consignments of her cargo, it is evident that she would

have proceeded from Santiago to Cienfuegos. She was actually engaged in trading between ports of the enemy. Had she reached Santiago or Cienfuegos, there can be little doubt that her outward voyage would have terminated then and there, for even if she had been willing to take the risk of proceeding to Pensacola, the Spanish authorities would not have allowed it.

The claimant, invoking the doctrine of continuous voyages, contends that, when captured, the *Pedro* had for her ulterior destination the port of Pensacola, Florida; hence that she was entitled to immunity from capture under the fifth paragraph of the proclamation. He argues that the taking on of cargo at Havana and the calls to be made for the purpose of discharging it at Santiago and Cienfuegos were mere incidents of the voyage. If the doctrine of continuous voyages laid down by the authorities cited in the appellant's brief (pp. 34-36) were applicable in this case, it would lead to the conclusion that the *Pedro* was bound from Antwerp to Rotterdam by way of Cuba and the United States; that is to say, from one foreign port to another. Under such circumstances, she could claim no immunity. But the facts before us are very different from those presented in the cases cited. The *Pedro* was not obligated to reach Pensacola at any definite time. The discharge of part of her cargo at Havana was the first business in hand. Her charter did not interfere in the least with her seeking other business, and it cannot be doubted that she would have accepted more had it been offered. The outbound voyage with cargo to Cuba was wholly distinct from what was to follow. It was to terminate with the last discharge of cargo at a Cuban port. Then the character of her business was to change, and she was to begin a new voyage under an express agreement. If the position were tenable that the *Pedro's* voyage to



Cuba was merely a stage in a continuous voyage with a terminus in the United States, it would follow that any enemy vessel which happened to have sailed from a foreign port prior to April 21st could have continued indefinitely trading between ports of the enemy, and if seized at any time by a United States vessel, could have cleared herself by declaring that her ulterior destination was a port of the United States.

### III.

*The claimant's test affidavit and the proofs in the cause do not set up a fact or create a doubt which would have justified the Court below in allowing the claimant to take further proofs. (Error 8th.)*

The depositions of the claimant, the master, and that of the first officer of the *Pedro*, taken in *preparatorio*, clearly establish all facts in the case, which are material, and, as we have seen, these furnish abundant support for the decree of condemnation. The rule with regard to the ordering of further proofs is stated in *Benedict's Admiralty*, Sec. 612:

"These [ship's] papers and examinations in *preparatorio* constitute the only evidence on which the cause is first heard. If, on this evidence, there be doubt or justice require it, the court may, in its discretion, order further proof."

This gives the captured vessel the great advantage of having her cause adjudicated, wholly, upon the evidence of those whose interests are hers.

In the case of the *Amiable Isabella*, 6 Wheat. 1, 77, it was said by Story, J.:

"It is to be recollected that, by the settled rule of prize courts, the *onus probandi* of a neutral interest rests on the claimant. This rule is tempered by another whose liberality will not be denied—that the evidence to acquit or condemn shall, in the first instance, come from the ship's papers and persons on board, and, where these are not satisfactory, if the claimant has not violated good faith, he shall be admitted to maintain his claim by further proof, but if, in the event, after full time and opportunity to adduce proofs, the claim is still left in uncertainty and the neutrality of the property is not established beyond reasonable doubt, it is the invariable rule of prize courts to reject the claim and decree condemnation of the property."

*Story, Principles & Practice in Prize Courts*, pp. 9, 18, 24. "There can be no honest reason why the whole truth should not be told by the captured persons on the first examination. \* \* \* Where the justice of the case requires the admission of new evidence, that may always be obtained. \* \* \* But further proof is in no case a matter of right, and rests in the sound discretion of the court." "It is never ordered unless cause appears on the original papers and the answers to standing interrogatories."

*Pizarro*, 2 *Wheat.* 240. "Nor should the captured crew have been permitted to be re-examined in court. They are bound to declare the whole truth upon their first examination, and if they then fraudulently suppress any material facts they ought not to be indulged with any opportunity to disclose what they please, or to give color to their former statements after counsel has been taken, and they know the pressure of the cause. Public policy and justice equally point out the necessity of an inflexible adherence to this rule."

*The Grey Jacket*, 5 *Wall.*, 342, 368.

*The Euphrates*, 8 *Cranch*, 385.

*The Hazard*, 9 *Cranch*, 205.

The recitals of the test affidavit, to the effect that, through ownership of or liens upon the stock of La Compañia La Flecha, British subjects would be concerned in the condemnation of the *Pedro*, and that the loss of the vessel would eventually be borne by British underwriters, are entirely immaterial and do not tend to prove that she was the property of neutrals. The royal patent from the Crown of Spain under which she was sailing, and the depositions of her master and first officer, prove her Spanish ownership conclusively. The claimant could not overcome this proof even if he were to contradict his sworn statement, and the burden of proving a neutral character rested upon the claimant.

*The Jenny*, 5 Wall. 183, 188.

*The Amiable Isabella*, 6 Wheat. 1, 78.

The proof is equally clear in showing that when captured the *Pedro* was actually engaged in trading between ports of the enemy—and was not entitled to any exemption granted by the President's proclamation. No further proof offered could disturb these facts. It would not have been proper to grant the motion.

We submit that the decree should be affirmed.

JOSEPH K. McCAMMON,

JAMES H. HAYDEN,

*of Counsel for Captors.*

HENRY M. HOYT,

*Assistant Attorney-General,*

*for the United States.*